

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 99 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

ASHOK MILLS LTD.

Appearance:

MR MIHIR J THAKORE instructed by MR M.R BHATT for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 27/01/97

ORAL JUDGEMENT (Per R.Balia,J.)

Two questions of law arising out of its order in
ITA No. 1493/Ahd/1981 for the Assessment Year 1978-79
had been referred to this Court for opinion by the Income
Tax Appellate Tribunal, Ahmedabad Bench "A" at the

instance of the Revenue. The two questions are as under:-

1. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the amount paid by the assessee for the royalty for the use of trademark 'Tabilised' was allowable as revenue expenditure?"
2. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to the allowance in respect of entertainment expenses under Section 37(2B) of the Income Tax Act, 1961."

The facts regarding question No.1 are that the assessee claimed service fees of Rs. 17,327/- payable to Messrs Mettur Bearshell Limited for services and user of trademark "Tabilised" or "Tabilised Double Tested". The Income Tax Officer disallowed this amount by holding the expenditure to be of a capital nature. However, same was held to be an expenditure on revenue account by CIT (Appeals) and the conclusion of CIT (Appeals) was affirmed by the Tribunal. It has been brought to our notice that in case of very same assessee for the Assessment Year 1977-78 this question was referred to this Court for its opinion in I.T Reference No.200/83. The relevant question concerned was about the allowability of the amount of Rs. 16,237/- paid by the assessee for the user of trademark "Tabilised" to Messrs Mettur Bearshell Ltd. This Court in its order dated 9th October, 1995 (CIT Vs. Ashoka Mills Ltd. - 131 CTR p.1) came to the conclusion that the expenditure incurred by the assessee for the user of trade mark was a revenue expenditure. The ratio is fully applicable to the facts of this Assessment year as well. Accordingly, question No.1 is answered in the affirmative, that is to say in favour of the assessee and against the revenue by holding that the amounts paid by the assessee for the use of trade mark "Tabilised" or "Tabilised Double Tested" was allowable as revenue expenditure.

So far as question No.2 referred above is concerned, it relates to the assessee's claim for deduction of Rs, 21,163/- as business expenditure which was spent for providing tea, soft drinks etc. on guests. The assessee has founded its claim on the basis of

decision of this Court in Patel Brothers Vs. C.I.T - 106 ITR p. 424. The decision in Patel Brothers' case has been affirmed by Supreme Court in CIT Vs. Patel Brothers and Company Ltd. and others - 215 ITR 165. However, from the aforesaid report itself it is clear that in view of Explanation (2) inserted with effect from 1.4.1976 in Sec. 37 (2A), the narrow meaning assigned to term "entertainment" in the context of disallowance of entertainment expenditure as a business expenditure by virtue of sub-section (2A) of Section 37 of the I.T Act, 1961 is not applicable for the Assessment Year 1976-77 onwards as a result of extended meaning given to the definition of entertainment to include hospitality as well. The only thing excluded from the definition of entertainment expenditure which would otherwise fall into the definition under Explanation (2) is the expenditure on food or beverages provided to its employees in the office, factory or other place of their work. Since it appears from the assessment order that no part of claim of assessee is founded on the expenses having been incurred in providing food or beverages to its employees, the further question for determining the extent of allowability does not arise in the present case. Accordingly, following the decision in Patel Brothers' case (supra), - 215 I.T.R 165, we answer the question No.2 in negative that is to say in favour of revenue and against the assessee.

The reference accordingly stands disposed of with no order as to costs.
